



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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July 14, 2015

Mr. Burton Florence - #973731  
Pendleton Correctional Facility  
4490 West Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 15-FC-177; Alleged Violation of the Access to Public Records Act by Pendleton Correctional Facility*

Dear Mr. Florence,

This advisory opinion is in response to your formal complaint, which alleges the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms. Michelle Rains, Administrative Assistant, responded on behalf of the Facility. Her response is attached for your review. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 6, 2015.

## **BACKGROUND**

Your complaint dated June 2, 2015, alleges the Pendleton Correctional Facility violated the Access to Public Records Act by failing to provide you with the records you requested.

On April 27, 2015, you requested from the Facility's safety hazard manager, a copy of the required training materials you were supposed to receive in accordance with Executive Directive #06-57. You also requested confirmation you had received training. You contend prison policy requires the safety hazard manager maintain records of all offender training. State retention schedules could also be implicated.

Your request was forwarded to Ms. Rains, who required you to submit a public records request. On May 7, 2015, she, on behalf of the Facility, informed you twenty-five (25) pages of records had been located and that they would be provided to you once you submitted payment. On May 27, 2015, the Facility informed you no other records could be located and that your inquiry seeking confirmation you received training could not be fulfilled, because it was not within the responsibilities of that particular office.



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## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Pendleton Correctional Facility is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Facility's disclosable, public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

The prison staff has responded to your complaint by providing you with documents it believes is responsive to your request. Otherwise, the prison has maintained it does not have the documents you requested. An agency cannot provide documents it does not possess.

This office has attempted to obtain a copy of the prison policy you cite and has been unable to. Without the benefit of a policy copy, this office cannot conclusively determine whether prison staff failed to comply with records retention under the APRA. If the policy does mandate record retention, then there is a violation. However, the language of the policy is an unknown factor in this case and therefore I cannot state definitively whether a violation has occurred. That being said, I have copied all parties on this memo and it is my sincere hope that you are able to obtain a copy of the records you seek or else be directed to the appropriate repository of the information.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Michelle Rains; Mr. Derrek McMullen; Mr. Chris Kuhn